

REMARKS/ARGUMENTS

Claims 1 and 22-39 were previously pending in this application. Claims 31-39 are allowed and claims 1 and 22-30 have been rejected in the subject office action. Claim 1 is now cancelled. Applicant respectfully requests allowance of each of pending claims 22-39.

5 **I. Allowable Subject Matter**

Applicant acknowledges with appreciation the Examiner's indication, in paragraph 3 of the subject Office Action, that claims 31-39 are allowed.

II. Claim Rejections

10 In the subject office action, specifically in paragraph 2, claims 1 and 22-30 were rejected under 35 USC §101 as "claiming the same invention as that of claims 1, 6-9, 1-5 of prior U.S. Patent No. 6,771,062. This is a double patenting rejection." Applicant believes that this rejection is actually based upon U.S. Patent No. "6,711,062" which issued from the parent application of the subject pending application, and not U.S. Patent No. 6,771,062. Applicant respectfully submits that these claim rejections should be withdrawn for reasons set forth below.

15 Independent claim 22 of the present application was apparently rejected for claiming the same invention as claim 6 of U.S. Patent 6,711,062 (hereinafter "the '062 Patent"). Applicant points out that claim 6 of the '062 Patent depends from claim 1 which is an independent method claim. Independent claim 1 of the '062 patent is directed to "A method of erasing reference cells . . . whereby said erasing is initiated by a pulse generated upon each application of a supply
20 voltage . . .". This is distinguished from independent claim 22 of the subject application. Claim 22 recites "A power-on reset circuit in a flash EPROM memory comprising . . .". Claim 22 is a device/apparatus claim and is therefore distinguished from method claims 1 and 6 of the '062 patent. Applicant respectfully submits that pending claim 22 of the subject application could be literally infringed without literally infringing claim 6 of the '062 patent by someone who

provided the claimed device but did not practice the claimed method, and that, therefore, according to MPEP § 804 II. A., citing *In re Vogel* 422 F.2d 438, 164 USPQ 619 (CCPA 1970), statutory double patenting under 35 USC §101 does not exist.

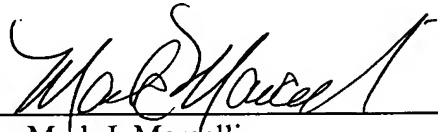
Independent device/apparatus claim 22 of the subject application and method claim 6 of the '062 patent do not claim the same invention and the double patenting rejection of claim 22 under 35 USC §101, should be withdrawn. Claims 23-30 each depend from independent device/apparatus claim 22 of the subject invention and are therefore similarly distinguished from claim 7-9 and 1-5 of the '062 patent. Claim 1 has been cancelled. Therefore the double patenting rejection of claims 1 and 22-30 under 35 USC §101, should be withdrawn. Each of claims 22-30 are in allowable form.

CONCLUSION

Based on the foregoing, each of claims 22-39 are in allowable form and the application is therefore in condition for allowance, which action is respectfully and expeditiously requested.

Respectfully submitted,

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